

House File 556 - Introduced

HOUSE FILE _____
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 91)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act establishing the Iowa propane education and research
2 council, providing for the development of programs and
3 projects related to propane, providing for an assessment on
4 the sale of odorized propane, providing criminal penalties,
5 and providing for effective dates.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
7 TLSB 1424HV 82
8 av/es/88

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1 1 Section 1. NEW SECTION. 101B.1 SHORT TITLE.
1 2 This chapter shall be known as and may be cited as the
1 3 "Iowa propane education and research Act".
1 4 Sec. 2. NEW SECTION. 101B.2 DEFINITIONS.
1 5 As used in this chapter, unless the context otherwise
1 6 requires:
1 7 1. "Council" means the Iowa propane education and research
1 8 council established pursuant to section 101B.3.
1 9 2. "Education" means any activity designed to provide
1 10 information regarding propane, propane equipment, mechanical
1 11 and technical practices, and uses of propane, to consumers and
1 12 members of the propane industry.
1 13 3. "Fire marshal" means the state fire marshal as provided
1 14 in section 100.1.
1 15 4. "Odorized propane" means propane to which an odorant
1 16 has been added.
1 17 5. "Propane" means a hydrocarbon with a chemical
1 18 composition that is predominately C3H8, whether recovered from
1 19 natural gas or crude oil, and includes liquefied petroleum
1 20 gases and mixtures.
1 21 6. "Propane industry" means those persons involved in the
1 22 production, transportation, and sale of propane, and in the
1 23 manufacture and distribution of propane utilization equipment.
1 24 7. "Propane industry trade association" means an
1 25 organization exempt from tax under section 501(c)(3) or
1 26 501(c)(6) of the Internal Revenue Code, that represents the
1 27 propane industry.
1 28 8. "Public member" means a member of the council, other
1 29 than a representative of a retail propane marketer, who
1 30 represents a significant user of propane, a public safety
1 31 official, a state regulatory official, or another group
1 32 knowledgeable about propane.
1 33 9. "Qualified propane industry organization" means the
1 34 Iowa propane gas association or any other similarly
1 35 constituted industry trade association that represents at
2 1 least thirty-five percent of the total volume of odorized
2 2 propane sold at retail in this state.
2 3 10. "Research" means any type of study, investigation,
2 4 program, or other activity designed to advance the image,
2 5 desirability, usage, marketability, efficiency, or safety of
2 6 propane or to further the development of information related
2 7 to such activities.
2 8 11. "Retail propane dispenser" means a person who sells
2 9 odorized propane to the ultimate consumer but is not engaged
2 10 primarily in the business of such sales.
2 11 12. "Retail propane marketer" means a person engaged
2 12 primarily in the sale of odorized propane to the ultimate
2 13 consumer or to a retail propane dispenser.
2 14 Sec. 3. NEW SECTION. 101B.3 IOWA PROPANE EDUCATION AND
2 15 RESEARCH COUNCIL ESTABLISHED.

2 16 1. The Iowa propane education and research council is
2 17 established. Members of the council shall be appointed by the
2 18 governor from a list of nominees submitted by qualified
2 19 propane industry organizations within thirty days after the
2 20 effective date of this Act and by December 15 of each year
2 21 thereafter. The council shall consist of ten members, nine of
2 22 whom represent retail propane marketers and one of whom shall
2 23 be a public member. Qualified propane industry organizations
2 24 shall together nominate all members of the council. A vacancy
2 25 in the unfinished term of a council member shall be filled for
2 26 the remainder of the term in the same manner as the original
2 27 appointment was made. Other than the public member, council
2 28 members shall be full-time employees or owners of a propane
2 29 industry business or representatives of an agricultural
2 30 cooperative actively engaged in the propane industry. An
2 31 employee of a qualified propane industry organization shall
2 32 not serve as a member of the council. An officer of the board
2 33 of directors of a qualified propane industry organization or
2 34 propane industry trade association shall not serve
2 35 concurrently as a member of the council. The fire marshal or
3 1 a designee may serve as an ex officio, nonvoting member of the
3 2 council.

3 3 2. In nominating members of the council, qualified propane
3 4 industry organizations shall give due consideration to
3 5 nominating council members who are representative of the
3 6 propane industry, including representation of all of the
3 7 following:

3 8 a. Interstate and intrastate retail propane marketers.

3 9 b. Large and small retail propane marketers, including
3 10 agricultural cooperatives.

3 11 c. Diverse geographic regions of the state.

3 12 3. A council member, other than the public member, shall
3 13 not receive compensation for the council member's service and
3 14 shall not be reimbursed for expenses relating to the council
3 15 member's service. The public member shall receive a per diem
3 16 as specified in section 7E.6 and shall be reimbursed for
3 17 actual expenses incurred in performing official duties of the
3 18 council not to exceed forty days per year. A member of the
3 19 council shall not be a salaried employee of the council or of
3 20 any organization or agency which receives funds from the
3 21 council.

3 22 4. A council member shall serve a term of three years and
3 23 shall not serve more than two full consecutive terms. A
3 24 council member filling an unexpired term may serve not more
3 25 than a total of seven consecutive years. A former council
3 26 member may be appointed to the council if the former member
3 27 has not been a member of the council for a period of at least
3 28 two years.

3 29 5. Initial appointments to the council shall be for terms
3 30 of one, two, and three years that are staggered to provide for
3 31 the future appointment of at least two members each year.

3 32 6. The council shall select a chairperson and other
3 33 officers as necessary from its membership and shall adopt
3 34 rules and bylaws for the conduct of business and the
3 35 implementation of this chapter. The council may establish
4 1 committees and subcommittees comprised of members of the
4 2 council and may establish advisory committees comprised of
4 3 persons other than council members. The council shall
4 4 establish procedures for the solicitation of propane industry
4 5 comments and recommendations regarding any significant plans,
4 6 programs, or projects to be funded by the council.

4 7 7. The council shall develop programs and projects and
4 8 enter into agreements for administering such programs and
4 9 projects as provided in this chapter, including programs to
4 10 enhance consumer and employee safety and training, provide for
4 11 research and development of clean and efficient propane
4 12 utilization equipment, inform and educate the public about
4 13 safety and other issues associated with the use of propane,
4 14 and develop programs and projects that provide assistance to
4 15 persons who are eligible for the low-income home energy
4 16 assistance program. The programs and projects shall be
4 17 developed to attain equitable geographic distribution of their
4 18 benefits to the fullest extent practicable. The costs of the
4 19 programs and projects shall be paid with funds collected
4 20 pursuant to section 101B.4. The council shall coordinate its
4 21 programs and projects with propane industry trade associations
4 22 and others as the council deems appropriate to provide
4 23 efficient delivery of services and to avoid unnecessary
4 24 duplication of activities. Issues concerning propane that are
4 25 related to research and development, safety, education, and
4 26 training shall be given priority by the council in the

4 27 development of programs and projects.
4 28 8. At the beginning of each fiscal year, the council shall
4 29 prepare a budget plan for the next fiscal year, including the
4 30 probable cost of all programs, projects, and contracts to be
4 31 undertaken and a recommended rate of assessment sufficient to
4 32 cover the probable costs. The council shall submit the
4 33 proposed budget to the fire marshal for review and comment.
4 34 The fire marshal may recommend appropriate programs, projects,
4 35 and activities to be undertaken by the council.

5 1 9. The council shall keep minutes, books, and records that
5 2 clearly reflect all of the acts and transactions of the
5 3 council which are public records open to public inspection.
5 4 The books and records shall indicate the geographic areas
5 5 where benefits were conferred by each individual program or
5 6 project in detail sufficient to reflect the degree to which
5 7 each program or project attained equitable geographic
5 8 distribution of its benefits. The books of the council shall
5 9 be audited by a certified public accountant at least once each
5 10 fiscal year and at such other times as the council may
5 11 designate. The cost of the audit shall be paid by the
5 12 council. Copies of the audit shall be provided to all council
5 13 members, all qualified propane industry organizations, and to
5 14 other members of the propane industry upon request. In
5 15 addition, a copy of the audit and a report detailing the
5 16 programs and projects conducted by the council and containing
5 17 information reflecting the degree to which equitable
5 18 geographic distribution of the benefits of each program or
5 19 project was attained shall be submitted each fiscal year to
5 20 the chief clerk of the house of representatives and the
5 21 secretary of the senate.

5 22 10. The council is subject to the open meeting
5 23 requirements of chapter 21.

5 24 11. The council shall promulgate administrative rules
5 25 pursuant to chapter 17A which shall have the same force and
5 26 effect as if adopted by a state agency. Initial rules shall
5 27 be promulgated on an emergency basis.

5 28 12. The council shall also perform the functions required
5 29 of a state organization under the federal Propane Education
5 30 and Research Act of 1996, be the repository of funds received
5 31 under that Act, and separately account for those funds. The
5 32 council shall coordinate the operation of the program with the
5 33 federal council as contemplated by 15 U.S.C. } 6405.

5 34 Sec. 4. NEW SECTION. 101B.4 FUNDING == ASSESSMENTS.

5 35 1. The council and its activities shall be funded by an
6 1 annual assessment. Upon establishment of the council an
6 2 initial assessment shall be made at a rate of one-tenth of one
6 3 cent on each gallon of odorized propane sold. Any increase in
6 4 the initial assessment rate shall be made only by adoption of
6 5 a rule pursuant to chapter 17A establishing a new rate. The
6 6 initial assessment rate shall be in effect for at least one
6 7 year after which the council shall determine the annual
6 8 assessment as set forth in section 101B.3, provided, however,
6 9 that the annual assessment shall not exceed one-half cent on
6 10 each gallon of odorized propane sold unless the assessment is
6 11 approved in a referendum of retail propane marketers conducted
6 12 pursuant to section 101B.5. In addition, the annual
6 13 assessment shall not be raised in any one year by more than
6 14 one-tenth of one cent on each gallon of odorized propane sold.

6 15 2. The owner of odorized propane at the time of
6 16 odorization or at the time of import shall calculate the
6 17 amount of the assessment based on the volume of odorized
6 18 propane sold for use in this state. The assessment, when
6 19 made, shall be listed as a separate line item on the bill of
6 20 sale for the odorized propane and titled "Iowa propane
6 21 education and research assessment". Assessments shall be
6 22 collected by the owner from purchasers of the odorized propane
6 23 and shall be paid by the owner to the council on a monthly
6 24 basis by the twenty-fifth day of the month following the month
6 25 the assessment was collected. If payment is not made to the
6 26 council by the due date as required by this subsection, an
6 27 interest penalty of one percent of any amount unpaid shall be
6 28 imposed against the owner for each month or fraction of a
6 29 month after the due date, until final payment is made.

6 30 3. Notwithstanding subsection 2, the council may establish
6 31 an alternative means of collecting such assessments if the
6 32 council determines that another method would be more efficient
6 33 or effective and may establish an alternative late payment
6 34 charge or interest penalty to be imposed on a person who fails
6 35 to timely pay any amount due under this chapter to the
7 1 council.

7 2 4. Pending the disbursement of assessments collected, the

7 3 council shall invest moneys collected through assessments and
7 4 any other monies received by the council in any of the
7 5 following:

7 6 a. Obligations of the United States or any agency of the
7 7 United States.

7 8 b. General obligations of any state or political
7 9 subdivision of any state.

7 10 c. Any interest-bearing account or certificate of deposit
7 11 of a bank that is a member of the federal reserve system.

7 12 d. Obligations that are fully guaranteed as to principal
7 13 and interest by the United States.

7 14 Sec. 5. NEW SECTION. 101B.5 REFERENDUM FOR INCREASED
7 15 ASSESSMENTS OR TERMINATION OF COUNCIL.

7 16 1. Qualified propane industry organizations may arrange,
7 17 at their own expense, for a referendum among retail propane
7 18 marketers to approve an increase in the annual assessment as
7 19 provided in section 101B.4. The council shall reimburse the
7 20 qualified propane industry organizations for the accounting
7 21 and documentation costs of the referendum. An independent
7 22 auditing firm agreed upon by the qualified propane industry
7 23 organizations shall conduct the referendum. The results of
7 24 the referendum, as certified by the independent auditing firm,
7 25 shall be submitted to the fire marshal within thirty days
7 26 after certification. Voting rights in the referendum shall be
7 27 based on the volume of odorized propane sold in this state by
7 28 each retail propane marketer during the previous calendar
7 29 year. Each retail propane marketer voting in the referendum
7 30 shall certify to the independent auditing firm the volume of
7 31 odorized propane sold by that person as represented by that
7 32 person's vote. Upon the approval of those retail propane
7 33 marketers representing two-thirds of the total volume of
7 34 odorized propane sold in this state, the council shall be
7 35 authorized to collect an increased assessment on odorized
8 1 propane in accordance with section 101B.4.

8 2 2. On the council's own initiative or on petition to the
8 3 council by retail propane marketers representing thirty-five
8 4 percent of the volume of odorized propane sold in this state,
8 5 the council shall, at its own expense, arrange for a
8 6 referendum to be conducted by an independent auditing firm
8 7 agreed upon by the retail propane marketers, to determine
8 8 whether the council should be terminated or suspended. Voting
8 9 shall be conducted in the same manner as described in
8 10 subsection 1. Upon the approval of those retail propane
8 11 marketers representing more than one-half of the total volume
8 12 of odorized propane sold in this state, the council shall be
8 13 terminated or suspended and the general assembly shall
8 14 consider the repeal of this chapter during its next regular
8 15 session.

8 16 Sec. 6. NEW SECTION. 101B.6 COMPLIANCE.

8 17 The district court is vested with the jurisdiction
8 18 specifically to enforce this chapter and to prevent or
8 19 restrain any person from violating this chapter. A successful
8 20 action for compliance brought under this section may also
8 21 require payment by the defendant of the costs incurred by the
8 22 council in bringing the action.

8 23 Sec. 7. NEW SECTION. 101B.7 LOBBYING RESTRICTIONS.

8 24 Moneys collected by the council shall not be used in any
8 25 manner for influencing legislation or elections, except that
8 26 the council may recommend changes in this chapter or other
8 27 statutes that would further the purposes of this chapter to
8 28 the fire marshal.

8 29 Sec. 8. NEW SECTION. 101B.8 PRICING.

8 30 In all cases, the price of propane shall be determined by
8 31 market forces. Consistent with antitrust laws, the council
8 32 shall not take any action regarding, and this chapter shall
8 33 not be interpreted as establishing, an agreement to pass along
8 34 to consumers the cost of the assessment provided for in
8 35 section 101B.4.

9 1 Sec. 9. NEW SECTION. 101B.9 RELATION TO OTHER PROGRAMS.

9 2 This chapter shall not be construed to preempt or supersede
9 3 any other program relating to propane education and research
9 4 organized and operated under the laws of this state. This
9 5 chapter shall be administered and construed as complementary
9 6 to the federal Propane Education and Research Act of 1996, 15
9 7 U.S.C. } 6401 et seq.

9 8 Sec. 10. NEW SECTION. 101B.10 BOND.

9 9 Any person occupying a position of trust under any
9 10 provision of this chapter shall provide a bond in an amount
9 11 required by the council. The costs of obtaining the bond
9 12 shall be paid out of council funds.

9 13 Sec. 11. NEW SECTION. 101B.11 REPORT.

9 14 The council shall prepare and submit an annual report to
9 15 the fire marshal and the auditor of state summarizing the
9 16 activities of the council conducted pursuant to this chapter.
9 17 The report shall show all income, expenses, and other relevant
9 18 information concerning assessments collected and expended
9 19 under this chapter.

9 20 Sec. 12. NEW SECTION. 101B.12 NOT A STATE AGENCY.

9 21 The Iowa propane education and research council is not a
9 22 state agency.

9 23 Sec. 13. NEW SECTION. 101B.13 PENALTY.

9 24 A person who willfully violates the provisions of this
9 25 chapter or willfully renders or furnishes a false or
9 26 fraudulent report, statement, or record required by the fire
9 27 marshal pursuant to this chapter is guilty of a simple
9 28 misdemeanor.

9 29 Sec. 14. EFFECTIVE DATES.

9 30 1. This Act, except section 4, being deemed of immediate
9 31 importance, takes effect upon enactment.

9 32 2. Section 4 of this Act takes effect January 1, 2008, or
9 33 upon adoption of administrative rules implementing section 4,
9 34 whichever occurs first.

9 35 EXPLANATION

10 1 This bill creates new Code chapter 101B which establishes
10 2 the Iowa propane education and research council. The council
10 3 consists of 10 members, nine of whom represent retail propane
10 4 marketers and one of whom is a public member who represents a
10 5 significant user of propane, a public safety official, a state
10 6 regulatory official, or another group knowledgeable about
10 7 propane. Council members are appointed by the governor from a
10 8 list of nominees submitted by certain qualified propane
10 9 industry organizations representing the propane industry.

10 10 The purpose of the council is to develop programs and
10 11 projects and enter into agreements for administering such
10 12 programs and projects concerning propane with priority given
10 13 to issues related to propane involving research and
10 14 development, safety, education, and training. The programs
10 15 and projects must be developed to attain equitable geographic
10 16 distribution of their benefits to the extent practicable. The
10 17 council is required to prepare an annual budget plan and
10 18 recommend a rate of assessment sufficient to cover the costs
10 19 of that plan.

10 20 The council and its activities are funded by an annual
10 21 assessment on odorized propane sold for use in this state.
10 22 The bill authorizes an initial annual assessment to be made at
10 23 a rate of one-tenth of one cent on each gallon of odorized
10 24 propane sold. Any increase in the assessment rate shall be
10 25 made by the adoption of a rule establishing a new rate. The
10 26 initial assessment shall be in effect for at least one year
10 27 after which the council determines the annual assessment,
10 28 provided that the annual assessment cannot exceed one-half
10 29 cent on each gallon of odorized propane unless an increase in
10 30 the assessment is approved in a referendum of retail propane
10 31 marketers. In addition, the annual assessment cannot be
10 32 raised in any one year by more than one-tenth of one cent.

10 33 The bill provides that the assessment is calculated by the
10 34 owner of odorized propane at the time of odorization or import
10 35 of the propane based on the volume of odorized propane. The
11 1 assessment must be included as a separate line item on the
11 2 bill of sale for the odorized propane and collected by the
11 3 owner from the propane purchasers for payment to the council
11 4 each month. The bill allows the imposition of an interest
11 5 penalty for failure to pay the assessments collected by the
11 6 due date.

11 7 The council is authorized to establish an alternative means
11 8 of collecting assessments and alternative late payment charges
11 9 or interest penalties. The council is required to invest
11 10 assessments collected until disbursement in a specified
11 11 manner.

11 12 The bill establishes procedures for holding a referendum
11 13 among retail propane marketers to increase the annual
11 14 assessment or to terminate or suspend the council.

11 15 The bill gives state district courts jurisdiction to
11 16 enforce the new Code chapter, prohibits the use of assessments
11 17 for lobbying activities, prohibits the cost of assessments to
11 18 be passed on to consumers, requires persons occupying
11 19 positions of trust under the new Code chapter's provisions to
11 20 obtain a bond, and requires the council to submit an annual
11 21 report to the state fire marshal and to the auditor of state.
11 22 The council is also required to submit a copy of the annual
11 23 audit and report to the chief clerk of the house and to the
11 24 secretary of the senate.

11 25 A willful violation of the bill or false or fraudulent
11 26 reporting of information required by the state fire marshal
11 27 pursuant to the provisions of the bill constitutes a simple
11 28 misdemeanor. A simple misdemeanor is punishable by
11 29 confinement for no more than 30 days or a fine of at least \$65
11 30 but not more than \$625 or by both.
11 31 The bill takes effect upon enactment except for a provision
11 32 concerning establishment of assessments, which takes effect
11 33 upon adoption of administrative rules implementing the
11 34 subsection.
11 35 LSB 1424HV 82
12 1 av:nh/es/88